

stage of the proceedings so long as due process is satisfied. *Id.*; *Swanson v. Employment Appeal Board*, 554 N.W.2d 294, 297 (Iowa App. 1996); *Kehde v. Iowa Dept. of Job Service*, 318 N.W.2d 202, 206 (Iowa 1982); *Flesher v. Iowa Dept. of Job Service*, 372 N.W.2d 230, 233 (Iowa 1985). Despite this, however, due process does require some notice to the parties of what issues are to be decided. For example, notice of a disqualification based on a discharge is not adequate notice that the issue of disqualification based on a quit will be adjudicated. *Silva v. Employment Appeal Bd.* 547 N.W.2d 232 (Iowa App. 1996); Iowa Code § 17A.12(2)(c) and (d). Here, the notice cited §96.4(3) which is availability but the Administrative Law Judge seemed to dispose of the case on §96.4(5) dealing with reasonable assurance. We note that in *Silva* the Court found a rule considering quit and terminations to be the single issue of “separation” was inadequate notice. Just so we do not think availability and reasonable assurance, two very different issues, can subsumed under the single issue of “able and available.” Moreover, the testimony on reasonable assurance was sparse. Further, we note that the question of reasonable assurance applies only during certain specified periods of time, e.g., between academic years. We thus would need evidence on when the break between academic years, and academic terms occurs at the Employer. Of course, we also note that the general rule is that a “Week of total unemployment” is defined to be “[a] week in which an individual performs no work and earns no wages” and is not tied to merely being listed on payroll as an employee. A remand for an additional hearing is therefore mandatory so that the parties can address the issue of reasonable assurance.

DECISION:

The decision of the administrative law judge dated September 28, 2017 is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Bureau. The administrative law judge shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights.

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